

1 and that was their intraMTA rate.

2 It is different -- that is two components of
3 their access, but the third component that doesn't make it
4 access is they did not apply their -- the same rate on their
5 CCL as they had -- as they do on their access rate. But
6 basically to answer your question, I am applying the
7 switching component and the transport component that the
8 companies are actually doing for their intraMTA rate.

9 Q. And can you quantify what that translates
10 into?

11 A. From previous -- yes, if you give me just a
12 minute.

13 Q. All right. Thank you.

14 A. At that time, for Chariton Valley, the rate
15 would have been 3.71 cents. For Northeast, it would be 4.56
16 cents.

17 Q. And when you say at that time, would that
18 likely have changed between then and now?

19 A. I don't know if they've changed their access
20 tariff on the -- let me look just a moment. I might be able
21 to answer your question. According to my understanding, it
22 has changed for Chariton.

23 Q. Has it gone down?

24 A. I actually think it might have gone up. I
25 think it would almost be the same for Northeast, as I quoted

1 before, but I'm looking at components.

2 Q. You mean you think the Chariton Valley amount
3 would be close to what the original Northeast amount was?

4 A. Based on my understanding of what the access
5 charges are now for those components, it would have been -- I
6 think I gave you 3.71 for Chariton -- well, actually, I'm
7 wrong, it would be the same thing. It would be 3.71 cents.

8 Q. Now, you looked at the cost studies for the
9 allocation factor studies, whatever you want -- whatever
10 they're appropriately called, and you did not find them to be
11 reliable; is that correct?

12 A. Yes, I mean, there was a lot of features that
13 I thought was good in their study, but I wanted to do a last
14 analysis on the reasonableness of it. And in some cases, in
15 most cases, it's over 100 percent off, and that was too much
16 of an error for me, so I came up with a fourth option.

17 Q. If the complainants have the burden to prove
18 that they are owed the amounts they claim they're owed, and
19 I'm trying not to ask this in the form of a legal question,
20 but would it be your opinion that they have proven that they
21 are owed the amounts they claim? That would be taking their
22 cost studies and their allocation studies and their numbers,
23 do you think they've proven that they're owed those amounts?

24 A. For all the information that they have,
25 they've done the best they could with what they have. The

1 real problem and the truth of the matter is nobody has the
2 information that the wireless carrier does not generate the
3 cell site information, they don't pass it on to Southwestern
4 Bell -- well, if they don't have it, they can't pass it to
5 Southwestern Bell. Southwestern Bell cannot generate it from
6 the CTUSR report because they don't have it. Chariton and
7 Northeast do not have it, and truthfully, Staff doesn't have
8 it in their option, so we've got the same problem with every
9 proposal that's here because the information is not
10 available.

11 Q. So if that's the case and it's agreed that
12 there is an amount of some sort owed, would it be reasonable
13 to assume that the claim for the largest amount is what's
14 actually owed or would it be reasonable to assume that
15 somewhere there should be a reasonable amount determined
16 based upon what is known?

17 A. Well, I'm basically going to take Staff's
18 approach on this, and the reason I am is that I think that
19 Cingular and -- Cingular got out of the game fairly early
20 after we opened the record, but Sprint PCS and US Cellular
21 and whatever, I did studies on them, and Sprint PCS came up
22 with their own study and they were within the ballpark. They
23 were very realistic with what Staff came up with.

24 US Cellular, basically, was going to -- they
25 came up with the study, and actually, they were going to

1 revise their numbers if they actually came to the hearing,
2 but they were going to recommend something, and basically
3 what they did was Staff's numbers were maybe five, six, seven
4 percent different, and they split it down the middle and they
5 settled on that. So I truthfully have to believe that
6 Staff's numbers are fairly realistic.

7 Now, there's something else I'm going to bring
8 up that's probably not really part of the record, but there
9 was an agreement in this last hearing in this room, it's not
10 the first hearing, but where T-Mobile and Chariton and
11 Northeast were going to agree to factors, and they were very,
12 very -- they were within three or four percent of what Staff
13 had in their proposal.

14 I mean, it's not part of the record, and I
15 realize that settlements are out the window, but to me, that
16 showed that what Staff came up with was fairly realistic and
17 both parties had agreed to those factors. It's in the record
18 that they agreed to them.

19 Craig Johnson got up and stated that these are
20 the factors, we don't need to have the hearing. Mark Johnson
21 got up and said that factors that Craig had mentioned are
22 correct and we have agreed to these factors, so that's part
23 of the reason that I believe Staff has the best -- the best
24 evidence here. There is, you know, based on the best
25 information it can get.

1 Q. Okay. And then in terms of the secondary
2 liability, you're clearly taking the position that the
3 transiting carrier should not be secondarily liable; is that
4 right?

5 A. That is correct. We've been consistent in
6 both this case and a previous wireless case also that
7 Southwestern Bell should not be secondarily liable, no matter
8 if the traffic is interMTA or intraMTA. It's the originating
9 wireless carrier that should be responsible.

10 COMMISSIONER MURRAY: Okay. I believe that's
11 all I have. Thank you.

12 THE WITNESS: Thank you.

13 JUDGE THOMPSON: Thank you, Commissioner. I
14 have no questions. Recross, Craig Johnson.

15 RECROSS-EXAMINATION BY MR. CRAIG JOHNSON:

16 Q. Mr. Scheperle, did I understand you to say
17 that wireless carriers, such as T-Mobile, cannot record the
18 originating cell site information on a call?

19 A. As far as I understand, no wireless carrier is
20 doing that. I know that, in this case, that Sprint PCS did a
21 study -- a one-week study where they could do that, but it
22 took special software and a special study to set it up. And
23 as far as I know, no wireless carrier is doing that, and
24 basically that's why they negotiate interMTA factors through
25 negotiation because it's easier to do it that way than to

1 record every single wireless call.

2 Q. Who does your family use as its cellular
3 provider?

4 A. Sprint PCS.

5 Q. Okay. Do you get call detail on your bills?

6 A. From -- yes.

7 Q. And do they tell you where the calls
8 originated from? Centralia, Mexico, Fulton, Columbia, Lake
9 of the Ozarks, don't they tell you where the calls originated
10 on on those call detail reports?

11 A. Yes.

12 Q. Well, how do you think they know that? How do
13 you think Sprint PCS knows where a wireless call originates
14 unless they capture the call tower that first handled the
15 call?

16 A. They must have some method of setting it up,
17 but truthfully, the information that, as far as I know, is
18 not available to analyze that, otherwise we would have.

19 Q. If they capture that information for purposes
20 of billing their end user and providing them call detail,
21 don't you think they could transport that over the carrier
22 billing protocols and systems?

23 A. Possibly.

24 Q. In response to some of your answers to
25 Commissioner Murray's questions, you said that you had

1 recommended a rate for the intraMTA traffic that consisted of
2 Chariton Valley and Northeast's switched access rate
3 components, just the transport and switching components, and
4 not the CCO, right?

5 A. That is correct.

6 Q. For intraMTA?

7 A. For intraMTA traffic.

8 Q. Where did you come up with the idea that it
9 would be appropriate to get rid of the carrier common line
10 component of their switched access rates?

11 A. The -- basically in the wireless termination
12 tariffs that were filed by the 29 companies, they used a
13 figure of the CCL of \$.02, but there's nowhere in Chariton or
14 Northeast tariffs that \$.02 is ever mentioned, so the
15 switching component and the transport component are in the
16 tariffs, but not the CCL. And I couldn't use the CCL in
17 there on the access because if I use that, then we're back to
18 applying access charges.

19 Q. Thank you.

20 A. Okay.

21 Q. You answered my question.

22 A. Okay.

23 Q. Oh, -- no, that's not a bench question. I'm
24 sorry.

25 JUDGE THOMPSON: Mr. Bub.

1 CROSS-EXAMINATION BY MR. BUB:

2 Q. Just a quick follow-up in that same area about
3 the rate that you're proposing. That \$.02 adder that was
4 originally in the small company tariffs that was described by
5 their own witness, Bob Schoonmaker as an arbitrary \$.02; is
6 that correct? Do you recollect that?

7 A. Some people have quantified it as an arbitrary
8 \$.02.

9 Q. Isn't it correct that the Court of Appeals,
10 when they looked at it, reversed that part on the basis that
11 there was no support for that \$.02 adder?

12 A. That is my understanding. They didn't say
13 necessarily that the \$.02 was wrong, but they said I don't
14 believe there was sufficient support for the \$.02.

15 MR. BUB: Thank you. Those are all the
16 questions we had.

17 JUDGE THOMPSON: Thank you, Mr. Bub.
18 Mr. Johnson.

19 MR. MARK JOHNSON: Nothing, thank you.

20 JUDGE THOMPSON: Redirect, Mr. Meyer.

21 REDIRECT EXAMINATION BY MR. MEYER:

22 Q. Mr. Scheperle, in response to a question from
23 Commissioner Murray, you mentioned that you had examined the
24 reasonableness of the Chariton Valley and Northeast studies.
25 Could you explain what you mean when you say the word

1 reasonableness, what kind of considerations you were
2 considering?

3 A. Yes, I would. And first of all, to Chariton
4 Valley, and I believe it's been marked as Exhibit 303, and
5 basically in that, on the left-hand column is I used the
6 CTUSR reports, and these are reports that Southwestern Bell
7 generates that they would give to Chariton Valley. And the
8 period covered would be a month period from -- the first one
9 was November 5th of 2001 to December 4th of 2001. And the
10 number that's mentioned there is -- it's an HC number, but
11 that's the minutes of use.

12 I also went over to the next column and did
13 the next month, and that's the minutes of use, and then the
14 third column is the two-month total, and that's the number
15 from the CTUSR reports, and then I -- in the next two
16 columns, I had taken the complainant's testimony and
17 generated their minutes of use, and in this case, the minutes
18 of use is maybe 130 percent difference, so that's -- that's
19 why I said it was unreasonable.

20 In Exhibit 308, I'm talking about Northeast
21 Missouri, it's the very same principle. I understand that,
22 you know, I did -- there the -- they had done a three-month
23 -- three-month total from October 1st through 12/31/01. The
24 CTUSR doesn't quite match up.

25 There's maybe a four or five-day difference,

1 but it is a three-month total, and in that case, it's not
2 quite -- I didn't look at the percent difference, but I'm
3 roughly -- it's not quite 100 percent difference. It's less
4 than 100 percent difference, and that, to me, was the
5 reasonableness and why I came up with option four.

6 Q. I believe Commissioner Murray and also a
7 number of other people who have spoken with you this
8 afternoon have discussed some of the potential inaccuracies
9 or concerns with your methodology. Why do you believe that
10 your analysis is a more accurate than the MITG one, which of
11 course, is the only other one before the Commission?

12 A. Basically, I think a probability study is a
13 better method of doing it. And why I believe that is the
14 Sprint PCS, before they were dismissed from this case, they
15 had come up with factors, and I think Staff's factors were
16 within a reasonable range of what Sprint PCS had come up with
17 in their -- in their sample.

18 US Cellular that's been dismissed from this
19 case -- basically Staff's factors were close, within seven or
20 eight percent. The parties agreed to split difference
21 between Staff and what US Cellular had before, and so they
22 split the difference, which got it down to three or four
23 percent difference.

24 The parties, of course, that was in the
25 settlement conference, in an on-the-record hearing here, but

1 they had agreed to factors and they were within three to four
2 percent of what Staff recommended, and I think Staff's method
3 is the best method to use based on what the parties had
4 negotiated. And when they negotiate, they're looking out for
5 their best interest, and if they're negotiating factors close
6 to what Staff has, I believe my option four is very
7 realistic.

8 Q. So did you perform this methodology in other
9 situations, other than for these particular ones that we're
10 talking about today? In other words, these T-Mobile --

11 A. I had -- actually in this case, there was at
12 one time when the record was reopened, there was a lot of
13 carriers still involved in this. In fact, I was going to
14 look, and I had actually done the study for -- for the
15 wireless carriers, I had done it for Cingular, Sprint PCS, US
16 Cellular, T-Mobile and Western. And I had done it for -- of
17 the MITG companies, I've done it for Mid-Missouri, Northeast
18 Missouri, and Chariton Valley also.

19 Q. And Mr. Scheperle, in general, did the numbers
20 that the settlements came out to be roughly equivalent --
21 become roughly equivalent to the numbers that you had
22 arrived?

23 A. Within a realistic range, yes.

24 Q. Okay. Commissioner Murray had asked you
25 whether or not in light of the fact that you did your study

1 on a probability basis, we should take into account what is
2 actually known. Is it fair to say that Northeast and
3 Chariton Valley's studies, in fact, did not also cover the
4 same period of time that this complaint period covered?

5 I mean, let me rephrase. Their numbers also,
6 as did yours, not stem from the complaint period?

7 A. They base their study on -- one of them was
8 November and December of 2001, and I think Northeast had done
9 theirs on October of 2001 through December 2001. We got to
10 remember I think the complaint case in this basically goes
11 from February of 1998 through 2001, so they did use a sample
12 within the complaint itself.

13 Q. But that it was not, in fact, the complete
14 complaint; is that correct?

15 A. Well, it was not the -- it was not the four
16 months of data.

17 Q. It's simply a proxy, would you agree?

18 A. It's a two and three months period.

19 Q. And would you agree that yours is also
20 designed to serve as a proxy for having the actual data?

21 A. Yes.

22 Q. There was some discussion based on questions
23 from Commissioner Murray of how you arrived at the amount
24 that you would propose that interMTA traffic should be
25 charged. Do you recall that discussion?

1 A. Yes.

2 Q. And why, again, do you believe that access
3 rates are not appropriate for that situation?

4 A. The FCC in the first report and order says
5 that for intraMTA traffic, or local traffic, access charges
6 are not appropriate. Also, this Commission in Case No.
7 TT-99-428 said that access charges are not appropriate for
8 intraMTA traffic, or they might have used the word local
9 traffic, but intraMTA traffic is local traffic.

10 Q. And would you agree that that was probably a
11 topic that was discussed in Staff's brief and perhaps briefs
12 of the other parties as well?

13 A. Yes, it was.

14 Q. Okay. Thank you.

15 MR. MEYER: That's all I have.

16 JUDGE THOMPSON: Very good. You may step
17 down, Mr. Scheperle. You're excused. Thank you.

18 Briefing, gentlemen. Are we going to rebrief
19 the whole case, do you just want to brief what's been done
20 today? What do you want to do?

21 MR. MARK JOHNSON: Well, I think at this
22 point, it's been so long, I think --

23 JUDGE THOMPSON: I suggest you rebrief the
24 whole thing.

25 MR. MEYER: I just add in rereading Staff's

1 brief, there have been subsequent developments in cases that
2 we were citing to at the time that we would need to probably
3 now mention.

4 JUDGE THOMPSON: There's been additional law,
5 the contour of the case has changed.

6 MR. MARK JOHNSON: Briefs will be longer but
7 there will be fewer of them.

8 MR. MEYER: Actually, ours will probably be a
9 lot shorter, since we have less issues to address.

10 JUDGE THOMPSON: Mr. Craig Johnson.

11 MR. CRAIG JOHNSON: The time we tried this
12 case before, the customary pretrial order required us to
13 prepare Proposed Findings and Conclusions, which I think all
14 parties did.

15 I don't know if that's still a custom or not,
16 and my question is whether you want us to file Proposed
17 Findings and Conclusions. And why I'm leaning towards doing
18 that is because I think that's the best place for me to tell
19 you what claims have been resolved and what claims remain.

20 JUDGE THOMPSON: I appreciate you raising
21 that. I find Proposed Findings and Conclusions to be
22 extremely helpful. They need not be long, although the case
23 has taken a tremendous amount of time to bring to conclusion.
24 That doesn't necessarily mine that the Findings of Fact will
25 be necessarily extensive. I would like Proposed Findings and

1 Conclusions, if no one objects too strenuously.

2 Okay. Just provide references to the record,
3 if you would. And if you would also follow the conventions
4 of the Protective Order with respect to the highly
5 confidential and proprietary evidence so that we can be sure
6 to safeguard that, then I think we'll be in good shape.

7 How long do we want and what kind of
8 staggering? Do you want simultaneous initial, simultaneous
9 reply? Does that sound good? That's pretty much standard
10 here. 30 days, 30 days or 30 days, 15 days?

11 MR. MARK JOHNSON: Can we do 30-30?

12 JUDGE THOMPSON: 30-30 will work for me.

13 MR. MARK JOHNSON: When will we have the
14 transcript?

15 JUDGE THOMPSON: We haven't asked for
16 expedition. When will we have that, two weeks?

17 COURT REPORTER: That's correct.

18 JUDGE THOMPSON: So from the day the
19 transcripts are filed, and they are going to file an EFAS, so
20 you should all be able to -- do you all get EFAS
21 notifications on this case? In other words, when something
22 is filed on EFAS, I get an e-mail.

23 MR. CRAIG JOHNSON: I do, too, but I don't
24 remember seeing that for transcript filings.

25 MR. MEYER: I'm not sure if we get notices for

1 transcripts. I think you may and I may, but I sometimes get
2 two and I sometimes only get one. I get an internal and an
3 external.

4 JUDGE THOMPSON: Not getting into the
5 intricacies of EFAS, which would require another two years
6 just to describe. When the transcripts are filed, Ms.
7 Reporter, could you send a notice, how's that, to the
8 parties? Do you mail them something? You probably mail them
9 the transcript. How's that?

10 And you'll have 30 days, then. That will
11 alert you to check EFAS to see what the official filing date
12 of the transcript is, and you got 30 days from that. And I
13 will put out an order making it official, okay, so we'll do
14 30-30 from the transcript.

15 MR. MARK JOHNSON: Proposed Findings with our
16 initial brief?

17 JUDGE THOMPSON: That's the typical way. We
18 could do it either way.

19 MR. MARK JOHNSON: That's fine.

20 JUDGE THOMPSON: Okay. Thank you all very
21 much. I appreciate that you've settled as much you possibly
22 could on the road to this point. Thank you.

23 WHEREUPON, the recorded portion of the hearing
24 was concluded.

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